
U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: August 9, 1989
CASE NO. 87-ERA-47

IN THE MATTER OF

JOHN E. RYAN,
COMPLAINANT,

v.

NIAGARA MOHAWK POWER CORP.,
RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

ORDER TO SUBMIT SETTLEMENT AGREEMENT

Before me for review is an Order Granting motion to vacate and Dismissal of Complaint issued by Administrative Law Judge (ALJ) Robert J. Shea, on January 25, 1988, in the above-captioned case, which arises under Section 210 of the Energy Reorganization Act of 1974, 42 U.S.C. § 5851 (1982). The basis of the ALJ's dismissal of the case was that the parties have entered into a settlement resolving all issues in this case. *See* Respondent's letter of January 9, 1988.

No copy of the settlement agreement is in the record, and it appears that the agreement was not submitted to or reviewed by the ALJ. In whistleblower cases under the ERA which are settled, it is error for an ALJ to dismiss a case without reviewing the settlement and making a recommendation of whether the settlement is fair, adequate and reasonable. 42 U.S.C. § 5851(b)(2)(A); 29 C.F.R. § 24.6(a). *Fuchko and Yunker v. Georgia Power Co*., Case Nos. 89-ERA-9 and 10, Order to Submit Settlement Agreement issued March 23,, 1989, slip op. at 1 and 2. The Secretary has held that such a case cannot be dismissed unless the Secretary finds that the settlement is fair, adequate and reasonable.[1] *Macktal v. Brown & Root, Inc*., No. 86-ERA-23, Order to Submit

Settlement Agreement issued May 11, 1987, slip op. at 2; *Johnson v. Transco Products*, Case No. 85-ERA-7, issued August 8, 1985, slip op. at 1; *Chan Van Vo v. Carolina Power and Light Co*., Case No. 85-ERA-3, issued April 12, 1985, slip op. at 1. Although it is not necessary that the settlement agreement be part of the final order, as the Secretary explained in *Macktal v. Brown & Root*, "[w]here a settlement is not fair and equitable to a complainant, I cannot approve it for to do so would be an abdication of the responsibility imposed upon me by Congress to effectuate the purpose of section 5851, which is to encourage the reporting of safety violations by prohibiting economic retaliation against employees reporting such violatins [sic]." Slip op. at 2.

In the interest of judicial economy, rather than remand this case to the ALJ to review the settlement and submit a new recommended decision, the parties are ordered to submit a copy of the settlement agreement to me for review. If all the parties, including the Complainant individually, have not signed the settlement agreement itself, the parties shall submit a certification or stipulation, signed by all the parties to the agreement, including the Complainant individually, demonstrating their informed consent to the agreement. The agreement should be submitted within thirty days of receipt of this order.

SO ORDERED.

ELIZABETH DOLE
Secretary of Labor

Washington, D.C.

[ENDNOTES]

[1] Section 5851(b)(2)(A) of the ERA provides in pertinent part for termination of a proceeding "on the basis of a settlement entered into by the Secretary. . . . " In lieu of being a signatory to the settlement, it has been the Secretary's practice to review the terms of the settlement entered into by the private parties.